IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/08/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.38951 of 2003

Gojan Educational Trust
190 Lake View Road
West Mambalam
Chennai 600 033.
rep. by its Trustee R.Gopalan .. Petitioner

-vs-

1.Government of Tamil Nadu
Represented by its Secretary
Higher Education
(J1 Department).
2.All India Council of Technical
Education
Indira Gandhi Sports Complex
Indraprasatha Estate
New Delhi 110 002. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records on the file of the first respondent relating to letter No.248 10/J1/2003 dated 15.12.2003 and quashing the same and for a further direction directing the second respondent to process the application of the petitioner and to grant approval to the petitioner to establish an institution for M.C.A. Post-Graduate Degree Courses commencing from the academic year 2004-2005.

For Petitioner : Mr.A.V.Arun

For Respondents : Mr.P.Rathinavel
Government Advocate for R1

M/s.Vijay Narayan for R2

:ORDER

This writ petition has been brought forth seeking a writ of certiorarified mandamus to quash the proceedings of the first respondent dated 15.12.2003 and to direct the second respondent to process the application of

the petitioner and to grant approval to the petitioner to establish an institution for M.C.A. Post-Graduate Degree Courses commencing from the Academic Year 2004-2005.

2. From the averments made in the affidavit filed in support of the petition and the submissions made, it could be seen that the petitioner is a public charitable trust created with the object of providing modern educational avenues to establish, support and run educational institutions, establish hospitals, etc. The petitioner trust had obtained the application for grant of the letter of viability from the second respondent and submitted a copy of the application to the Regional Office of the second respondent at Madras and to the first respondent on 8.10.2003 for getting their No Objection Certificate (NOC) to be submitted to the second respondent. The petitioner completed the construction of the building, and all other infrastructural facilities have been kept intact. The second respondent was established as a National Expert Body to advise the Central and State Government for ensuring coordinated development of technical education in accordance with the approved standards. The powers and functions of the second respondent namely the Council, were regularised by way of a statute called the "All India Council of Technical Education (AICTE Act), 19 87 (Central Act 52 of 1987).

3. The learned Counsel for the petitioner relied on Sub Regulation (4)(e) to Regulation 8 of AICTE Regulations 1994, which runs as follows:

"It shall be necessary for the applicant to obtain "No Objection Certificate" (NOC) from the concerned State Government/UT, without which the application shall stand rejected. In case of proposals for establishment of new institute, the Council shall not invite the applicant for hearing, if the NOC of the State Government is not received in the Council on or before the cut-off-date specified by it. It shall also be desirable for the applicants who are called for hearing to obtain NOC from the concerned affiliating University and produce the same before the Hearing Committee."

4. According to the learned Counsel for the petitioner, an application was made to the first respondent for issuance of NOC; but, it was kept pending for a longtime without issuing NOC. The learned Counsel for the petitioner would submit that not even the petitioner's application was considered; but, the same was rejected by an order dated 1 5.12.2003, which is being assailed before this Court.

5. This Court heard the learned Government Advocate for the first respondent and the learned Counsel for the second respondent on those contentions.

6. A very reading of the Regulation 8(4)(e), as extracted above, would make it clear that for establishment of a new institution for M.C.A. Post-Graduate Degree Courses, the existing institution has to apply to the All India Council of Technical Education for approval in exercise of the powers under the Act. As per the said Regulation, grant of no objection certificate is made a condition precedent.

7. It is true that the petitioner had applied to the Government for grant of NOC. A reading of the order impugned would clearly show that the rejection of the application for grant of No Objection Certificate was only in consonance with the policy decision of the Government, and it has not been individually considered whether it is a fit case for granting NOC or not. In such circumstances, so many educational institutions came before this Court

and filed W.P.Nos.645 of 2004, etc., wherein this Court had an occasion to consider the contentions put forth by both sides and had passed an order dated 22.4.2004 that it is not proper on the part of the G overnment to make a wholesale rejection of the applications made; but, it has got to be individually considered on the merits of the matter. Now, the grievance ventilated by the petitioner before this Court is that his application has not been considered individually, and hence, an order has got to be passed in that lines. In such circumstances, following the earlier order of this Court made in the batch of writ petitions as referred to above, it would be suffice to issue a direction to the first respondent to consider the application of the petitioner individually on the merits of the matter. Accordingly, a direction is issued.

8. The petitioner also seeks for a direction to the first respondent for grant of approval to the petitioner to establish the institution for M.C.A. Post-Graduate Degree Courses commencing from the academic year 2004-2005. Now, at this juncture, it remains to be stated that the academic year 2004-2005 has already started, and the courses are now functioning. Under such circumstances, no question of considering the application of the petitioner for grant of approval for the academic year 2004-2005 would arise. Hence, it would be suffice to give a direction to the first respondent to consider the application of the petitioner for the ensuing academic year 2005-2006 individually, decide the matter and grant no objection certificate as early as possible. Accordingly, a direction is given.

9. In the result, this writ petition is ordered accordingly. No costs.

Index : yes
Internet: yes

To:

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Higher Education
(J1 Department).

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Education
Indira Gandhi Sports Complex
Indraprasatha Estate
New Delhi 110 002.

nsv/

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